IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8732 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARESH TANSUKHLAL

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner No. 1-2

MR KUNJAL D PANDYA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/08/2004

ORAL JUDGEMENT

RULE. Mr.Kunjal D. Pandya, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 and 2. With the consent of the parties, the matter is taken up for final hearing today.

2. In the present petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 10-05-2004/14-05-2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.49 of 1996, whereby, dismissing the same and confirming the order dated 14-12-1995 passed by the

Collector, Surat cancelling Entry No.1466 dated 04-11-1982 and Entry No.2004 dated 24-01-1990.

3. Petitioner No.1 - Paresh Tansukhlal had purchased land bearing Block No.42 situated at Village Antroli, Taluka Palsana by a registered Sale Deed from the original land owner. Necessary entry was made vide Entry No.1466 dated 04-11-1982 and the same was also certified. Thereafter, the petitioner No.2 purchased the said land in question from the petitioner No.1 by a registered Sale Deed in the year 1990 and the same was also mutated in the revenue records vide Entry No.2004 dated 24-01-1990. The said entry was also certified. Thereafter, it seems that, the Collector, Surat was of the opinion that by the aforesaid transaction there was a breach of Section 63 of the Bombay Tenancy Act and the petitioner No.2 was not an agriculturist and, therefore, he has taken Entry No.2004 dated 24-01-1990 into suo motu revision. Show-cause notice was issued to the petitioners. Thereafter, the Collector, by order dated 14-12-1995 not only cancelled Entry No.2004 dated 24-01-1990, which was in favour of respondent No.2, but also Entry No.1466 dated 04-11-1982 which was in favour of petitioner No.1 which was not taken into suo motu revision by the Collector. Against the aforesaid order 14-12-1995, the petitioners preferred a Revision Application being No.49 of 1996 before the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat which was by judgment and order dated 10-05-2004/14-05-2004 dismissed the same and confirmed the order dated 14-12-1995 passed by the Collector, Surat in cancelling the aforesaid entries. Against the said judgment and order dated 10-05-2004/14-05-2004, the present petition has been preferred by the petitioners.

4. Mr.A.J.Shastri, learned advocate for the petitioners, has submitted that the entries have been set aside on the ground that the petitioners were not the agriculturists. He has further submitted that in fact the proceedings were initiated by the Mamlatdar under Section 84(c) of the Bombay Tenancy Act. However, by order dated 24-12-2003 the proceedings under Section 84(c) were dropped by holding that the petitioners were agriculturists on the relevant date. He has further submitted that in fact while considering the RTS proceedings the revenue authorities were not justified in considering the fact that whether by the aforesaid transaction there was any breach of law or not. He has further submitted that even Entry No.1466 has been set aside by issuing notice in the year 1993, after a period of 11 years which can be said to be exercise of powers after unreasonable period. As held by the Hon'ble Supreme Court as well as this Court in catena of

judgments, the Collector was not justified in exercising suo motu powers after unreasonable period. For all these reasons, Mr.Shastri requested to allow the present petition.

5. Mr.Kunjal D. Pandya, learned AGP appearing on behalf of the respondents, has submitted that in view of the fact that as the Collector, Surat found that there was breach of law and it was found that the petitioners were not the agriculturists at the date of transaction, the Collector was justified in quashing and setting the aforesaid entries. He has further submitted the said order is rightly confirmed by the revisional authority.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. Entry in favour of petitioner No.1 was of 1982 came to be cancelled 1995. Entry in favour of petitioner No.2 was made on 1990 and the show-cause notice issued for the first time in the year 1993 while cancelling the aforesaid entries the Collector has come to the conclusion that by the aforesaid transaction there was breach of Section 63 of the Bombay Tenancy Act. The Collector was exercising powers under Rule 108 of the Bombay Land Revenue Code and was exercising RTS proceedings as held by this Court in the cases of Evergreen Apartment Co-operative Housing Society Vs. Special Secretary, Revenue Department, 1991(1) GLR 113 and Legal Representatives of Popat Khima Ramani and Ors. Vs. Collector, Rajkot and Ors., reported in 2003(1) GLH 30. The revenue authority has no jurisdiction to consider the legality and validity of the transaction and to decide the question whether there is any breach of law or not. Considering the aforesaid three judgments of this Court the Collector, Surat was not justified in quashing and setting aside the aforesaid entries on the ground that by aforesaid transaction there was breach of Section 63 of the Act. Those proceedings are required to be conducted and initiated by the appropriate authority under the appropriate Act and the same are done after giving opportunity to the concerned parties. This Court has not gone into the validity of the transaction between the parties. However, considering the aforesaid two judgments the Collector could not have set aside the aforesaid entries.

8. In view of the aforesaid facts and circumstances of the case, the order passed by the Collector, Surat dated 14-12-1995 is hereby set aside. Consequently, the judgment and order passed by the revisional authority

dated 10-05-2004/14-05-2004 is here by quashed and set aside. It is further made clear that this Court has not gone into validity of the transaction between the parties. It will be open for the appropriate authority to initiate appropriate proceedings for breach of any other law under Section 63 of the Act, if permissible under the law.

9. For the reasons stated above, the petition succeeds. Rule made absolute accordingly. No order as to costs. Sd/-

[M.R.SHAH, J]

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'Bhavesh'